IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

STATE OF OKLAHOMA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 05-cv-329-GKF(SAJ)**
	)	
TYSON FOODS, INC., et al.,	)	
	)	
Defendants.	)	

STATE OF OKLAHOMA'S REPLY IN FURTHER SUPPORT OF ITS MOTION TO COMPEL DEFENDANT CARGILL, INC. AND DEFENDANT CARGILL TURKEY PRODUCTION LLC TO PRODUCE FOR DEPOSITION A 30(b)(6) DESIGNEE FULLY KNOWLEDGEABLE ON THE NOTICED SUBJECTS

Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma and Oklahoma Secretary of the Environment C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma ("the State"), respectfully submits this reply in further support of its motion [DKT # 1244] for an order compelling Defendant Cargill, Inc. and Defendant Cargill Turkey Production LLC ("the Cargill Defendants") to produce for deposition a 30(b)(6) designee fully knowledgeable on the noticed subjects.

I. Argument

Contrary to the assertions of the Cargill Defendants, the State has not mischaracterized or misstated the facts of this dispute. The facts really are quite simple, and the dispute quite straightforward. The State sought, as is its right, to depose one or more fully-prepared corporate designees who could give complete, knowledgeable and binding answers on behalf of the Cargill Defendants to the clearly-delineated topics set forth in the 30(b)(6) deposition notice. *See, e.g., Cupp v. Edward D. Jones & Co., L.P.*, 2007 WL 982336, *1 (N.D. Okla. Mar. 29, 2007)

(describing obligations under Rule 30(b)(6)). The Cargill Defendants refused to produce such a fully-prepared designee. Rather, the Cargill Defendants expressly stated that "designee(s) will not be prepared to discuss corporate documents not yet produced or with which the designee is not independently familiar." *See* State's Motion, Ex. 4, pp. 2-3 (emphasis added).[1 & 2] The Cargill Defendants so-called "final communication" wherein they "expressly offer[ed] a 30(b)(6) designee for deposition on August 31, 2007," *see* Cargill Defendants' Response, p. 3, did not alter the fact that the only designee the Cargill Defendants were willing to offer would be, by their own admission, an unprepared designee.

To knowingly proceed with the deposition of a corporate designee that the Cargill Defendants had admitted beforehand would be unprepared would have been a waste of the State's time and would have unfairly prejudiced the State.[3] Accordingly, the State sought relief

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[1] In their Response, p. 4, the Cargill Defendants have the audacity to assert: "Plaintiffs' motion mischaracterizes the Cargill Defendants' positions on many significant issues. For example, the Cargill Defendants have not, as Plaintiffs [sic] suggest 'stated their intention to limit the scope of their 30(b)(6) designee's preparation to only those documents the Cargill Defendants have produced to date.'" The Cargill Defendants' statement that their "designee(s) will not be prepared to discuss corporate documents not yet produced or with which the designee is not independently familiar" flatly contradicts this assertion. Similarly, the Cargill Defendants assert that "[t]his is not a matter of . . . unilaterally limiting the scope of a deponent's preparation." Response, p. 4 (emphasis in original). This assertion, too, is contradicted by the Cargill Defendants' earlier statement. Simply put, the State has accurately quoted and characterized the Cargill Defendants' positions. It is the Cargill Defendants who are now mischaracterizing their own prior positions, apparently recognizing that they are indefensible.

[2] To the best of the State's knowledge, the Cargill Defendants' document production is still not complete.

[3] The Cargill Defendants take the untenable position that the State should have nevertheless proceeded with the deposition of the unprepared designee. Were the State to have proceeded as the Cargill Defendants suggest, the State (1) would have wasted time and money deposing an unprepared designee, (2) would have to expend additional time and money to later depose a properly prepared designee, and (3) would have in the process of taking the initial deposition previewed for the Cargill Defendants its cross-examination of the designee. Such a result is fundamentally unfair, and would reward the Cargill Defendants' obfuscatory tactics.

from the Court due to their refusal to comply with Rule 30(b)(6). Recognizing that their position was indefensible, the Cargill Defendants have now backpedaled from their earlier position. The Cargill Defendants now state that they "will produce deponents fully knowledgeable on all subjects proper for inquiry." Cargill Defendants' Response, p. 5 (emphasis added).

Thus, rather than directly resisting the State's discovery, the Cargill Defendants now apparently seek to work mischief on the deposition process through a more indirect but equally inappropriate method -- through the assertion of unfounded additional objections. The Cargill Defendants' direct and indirect refusal to comply with the Rules pertaining to 30(b)(6) depositions in a timely and appropriate fashion has cost the State nearly two months of trial preparation time, causing it significant prejudice. The State's Motion to Compel should therefore be granted in its entirety.[4]

A. The Cargill Defendants seek to improperly restrict the temporal scope of the 30(b)(6) deposition

The Cargill Defendants' effort to restrict the temporal scope of the 30(b)(6) deposition to a mere 5 years is improper for at least the following reasons: First, it ignores the fact that the parties, in connection with written discovery, have met and conferred regarding temporal issues. While not all issues were resolved, the Cargill Defendants now appear willing to produce at least certain categories of documents dated prior to 2002. As to these categories (*e.g.*, grower file information, flock evaluation reports, environmental audits, documents relating to breeder farms), it is nonsensical that the Cargill Defendants be allowed to now seek to back-track and revive their arbitrary 2002 discovery limitation for purposes of a 30(b)(6) deposition.

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[4] Incorporated in their response to the State's Motion to Compel was a cross-motion for protective order by the Cargill Defendants. Consistent with the rule that these two "events" should be treated separately, *see* N.D. Okla. CM/ECF Administrative Guide of Policies & Procedures, § IX.A.B, the State will accordingly respond separately to that cross-motion within the timeframe permitted under the Local Rules. *Compare* LCvR 7.2(c) & (h).

Second, the Cargill Defendants' Response ignores the fact that the majority of the topics contained in the 30(b)(6) notice refer or relate to some aspect of the Cargill Defendants' corporate knowledge as to the detriment to the environment from poultry waste. *See* State's Motion to Compel, Exs. 1 and 2. One can only surmise that by raising the temporal issue the Cargill Defendants are attempting to give the Court's July 6, 2007 Order [DKT #1207] an improperly and implausibly narrow reading. In that order, p. 3, the Court "require[d] Defendants to produce documents relevant to the corporate knowledge of the Cargill Defendants of detriment to the environment from the application of poultry waste to the ground without any limit as to the date of the documents . . . ." (Emphasis added.) The July 6, 2007 Order should be given a reading consistent with the recognition that the detriment to the environment from poultry waste is the core issue in this case. Given that the majority of the topics in the deposition notice refer or relate to some aspect of corporate knowledge on this issue (*i.e.*, these topics are "relevant to" this issue), temporal concerns do not arise.

For example, Topics 3, 4 and 5 go, *inter alia*, to matters pertaining to the inputs by the Cargill Defendants to the poultry growing process that result in the poultry waste having the chemical and biological composition that it does, and thus are an integral part of corporate knowledge as to the environmental detriment from poultry waste. Topic 9 similarly goes, *inter alia*, to the issue of the chemical and biological composition of the poultry waste. Topics 6 through 8, 10 and 11 go, *inter alia*, to matters pertaining to the quantity of poultry waste generated, and thus are also an integral part of corporate knowledge as to the environmental detriment from poultry waste. Topics 12, 13, 20, 22 through 28, and 30 through 33 go, *inter alia*, to matters pertaining to the handling of poultry waste, and thus are another integral part of corporate knowledge as to the environmental detriment from poultry waste. Topics 14, 15, 21 through 23, 26 through 28, 30 through 33, and 35 go, *inter alia*, to matters pertaining to the run-

off / release of poultry waste, and thus are yet another integral part of corporate knowledge as to the environmental detriment from poultry waste. And Topics 16 through 19, 22, 23, 26 through 28, 30 through 33, and 35 go, *inter alia*, to matters pertaining to the environmental effects of poultry waste, and thus are still another integral part of corporate knowledge as to the environmental detriment from poultry waste. Simply put, it appears that the Cargill Defendants are attempting to parse the language of the Court's order too finely in an effort to avoiding complying with legitimate discovery.

Third, in any event, the Court's order did not require the State to come forward with evidence of the relevancy of discovery into matters predating 2002 (or any other year for that matter). Rather, the Court's order, p. 3, simply required the parties to notify the Court of any unresolved issues which the Court may set down for briefing or testimony.

Finally, the Cargill Defendants' effort to set down a unilateral and arbitrary discovery cut-off of 2002 is not only inconsistent with this Court's order, but it also inconsistent with principles of relevancy set out in Fed. R. Civ. P. 26(b)(1) and the caselaw interpreting that Rule. There is simply no basis whatsoever for an arbitrary 2002 discovery cut-off, and the Cargill Defendants have offered none.

B. The Cargill Defendants seek to improperly restrict inquiry into the Cargill Defendants' corporate knowledge of the environmental effects of poultry waste[5]

The Cargill Defendants attempt to restrict inquiry into the Cargill Defendants' corporate knowledge of the environmental effects of poultry waste by essentially stating that their designee will not be prepared to testify about corporate entities other than Cargill, Inc. and Cargill Turkey

[5] Contrary to the Cargill Defendants' assertions made in the opening of their response (and addressed above), in this section of their argument the Cargill Defendants essentially admit that they were not willing to present a fully-prepared corporate designee for the noticed deposition.

Production LLC. This position is contrary to *Twentieth Century Fox Film Corp. v. Marvel Enterprises, Inc.*, 2002 WL 1835439 (S.D.N.Y. Aug. 8, 2002). In that case the court framed the question and concluded that . . .

> The current dispute raises the issue of whether an entity receiving a notice of deposition pursuant to Rule 30(b)(6) is obligated to produce a witness prepared with the knowledge of both the entity that received the subpoena and its subsidiaries or affiliates. I conclude that the scope of the entity's obligation in responding to a 30(b)(6) notice is identical to its scope in responding to interrogatories served pursuant to Rule 33 or a document request served pursuant to Rule 34, namely, it must produce a witness prepared to testify with the knowledge of the subsidiaries and affiliates if the subsidiaries and affiliates are within its control.

Id., at *2. Under the reasoning of *Twentieth Century Fox Film*, the Cargill Defendants cannot unilaterally limit the preparation of their corporate designee to the knowledge of solely Cargill, Inc. and Cargill Turkey Production LLC.

Additionally, the Cargill Defendants attempt to restrict inquiry into the Cargill Defendants' corporate knowledge of the environmental effects of poultry waste by restricting questioning of the corporate designee on the behavioral characteristics and environmental effects of constituents found in poultry waste to knowledge derived only from poultry operations. Inquiry by the State into the behavioral characteristics and environmental effects is plainly relevant to demonstrating the fate, transport and effect of these constituents. It matters not that the Cargill Defendants may have derived their knowledge from operations other than their poultry operations. Corporate knowledge is corporate knowledge irrespective of its source.

C. The Cargill Defendants seek to improperly restrict inquiry into the Cargill Defendants' corporate structure

The Cargill Defendants begin by asserting that they now are willing to offer "a witness to testify as to all aspects of its corporate structure conceivably related to the issues in the present case." Cargill Defendants' Response, p. 14. A short page later, however, the Cargill Defendants

refer to a letter in which they state that "the designee(s) would only be prepared to testify specifically to the organizational structure of the businesses with which the Cargill Defendants are affiliated that are involved in live poultry production in the United States." Cargill Defendants' Response, p. 15 (emphasis in original). Either the designee is going to be fully prepared or he /she is not. To the extent the Cargill Defendants have knowledge of the environmental impacts of poultry waste (including its constituents), and that knowledge is derived from operations outside the United States, the State is entitled not only to discover that knowledge, but also to understand specifically how such operations fit within the larger Cargill corporate structure.

D. The Cargill Defendants have signaled that they do not intend to produce a corporate designee knowledgeable about releases and run-off of poultry waste

Despite their earlier pronouncement that they are now willing to offer a fully-prepared corporate designee, the Cargill Defendants feign ignorance of any knowledge of releases and run-off of poultry waste and clearly signal that they do not intend to produce a corporate designee knowledgeable about these matters. Put another way, the Cargill Defendants do not intend to produce a fully-prepared witness.

The basis for the Cargill Defendants' objection is the assertion that the State has not told the Cargill Defendants the factual details of how their conduct violates the law. This is simply wrong. The State has provided the Cargill Defendants extraordinarily detailed interrogatory responses setting out information about releases and run-off of poultry waste. *See, e.g.,* Supplemental Objections and Responses to Cargill, Inc.'s First Set of Interrogatories, Responses 2, 9, 12, 13 & 15 (attached as Ex. 2 to DKT #1272); *see also* Response of State of Oklahoma to Motion for Sanctions of the Cargill Defendants (DKT #1272). Even without the benefit of the State's detailed information, it is clearly a topic on which the Cargill Defendants have ample

knowledge. Indeed, on September 10, 2004, in an open letter published in the newspaper, Defendant Cargill Turkey Production LLC joined other Defendants to this action in stating: "Our Scenic River Watersheds are examples of environments that include many sources of nutrients that potentially impact the health of the rivers and streams that lie within them. We are prepared to do our part to take care of the poultry portion of the nutrient equation." Ex. 1 (emphasis added). In light of this admission, for the Cargill Defendants to assert that they "know nothing about" releases and run-off of poultry waste is disingenuous to say the least.

Since they will not comply with their discovery obligations fully, voluntarily and directly, the Cargill Defendants plainly need to be compelled to produce a fully-prepared corporate designee on releases and run-off of poultry waste. Continued obfuscatory discovery tactics such as these by the Cargill Defendants are severely prejudicing the State in its trial preparation.

E. A follow-up deposition will be necessary and appropriate if the Cargill Defendants persist in their obfuscatory discovery tactics

A close read of the Cargill Defendants' response reflects that they are continuing to play games with discovery. On the one hand they state they will present a fully-prepared witness. And on the other hand they repeatedly put caveats on the extent of the witness's preparation. This behavior needs to stop. While the State hopes that after this Motion the Cargill Defendants will indeed produce a fully-prepared corporate designee, the State reserves all rights to conduct follow-up depositions to get the discovery it is entitled to if they do not.

II. Conclusion

For the reasons set forth herein, as well as the reasons set forth in the State's Motion to Compel, the State's Motion to Compel [DKT #1244] should be granted.

Respectfully Submitted,

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I hereby certify that on this 18th day of September, 2007, I electronically transmitted the above and foregoing pleading to the Clerk of the Court using the ECF System for filing and a transmittal of a Notice of Electronic Filing to the following ECF registrants:

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